

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: MOLLY MCCAFFERTY
SHAWN ESTRADA
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405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105

BY: JEFFREY COOPERSMITH
AARON BRECHER
AMANDA McDOWELL
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

BY: AMY WALSH
51 W 52ND STREET
NEW YORK, NEW YORK 10019

ALSO PRESENT: UNITED STATES ATTORNEY'S OFFICE
BY: CASEY BOOME
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

OFFICE OF THE U.S. ATTORNEY
BY: MADDI WACHS, PARALEGAL
SARA SLATTERY, PARALEGAL

UNITED STATES POSTAL INSPECTION SERVICE
BY: CHRISTOPHER MCCOLLOW

FEDERAL BUREAU OF INVESTIGATION
BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG
ADMINISTRATION
BY: GEORGE SCAUDIS

1 SAN JOSE, CALIFORNIA

MARCH 29, 2022

2 P R O C E E D I N G S

10:07AM 3 (COURT CONVENED AT 10:07 A.M.)

10:07AM 4 (JURY OUT AT 10:07 A.M.)

10:07AM 5 THE COURT: LET'S CALL OUR MORNING MATTER 18-258,

10:07AM 6 UNITED STATES VERSUS RAMESH BALWANI.

10:07AM 7 LET ME HAVE THE APPEARANCES OF THE PARTIES, PLEASE.

10:07AM 8 MR. LEACH: GOOD MORNING, YOUR HONOR.

10:07AM 9 ROBERT LEACH FOR THE UNITED STATES.

10:07AM 10 I'M JOINED BY JOHN BOSTIC AND JEFF SCHENK AT COUNSEL TABLE

10:07AM 11 ALONG WITH POSTAL INSPECTOR CHRISTOPHER MCCOLLOW.

10:07AM 12 I ALSO WANTED TO INTRODUCE CASEY BOOME WHO IS IN THE FIRST

10:07AM 13 ROW OF THE GALLERY.

10:07AM 14 THE COURT: GOOD MORNING.

10:07AM 15 MR. LEACH: I THINK THE COURT MET HIM BY VIDEO AT

10:07AM 16 SOME POINT, BUT HE'S ALSO HERE IN ATTENDANCE TODAY.

10:08AM 17 THE COURT: THANK YOU. GOOD MORNING EVERYONE.

10:08AM 18 MS. WALSH: GOOD MORNING, YOUR HONOR.

10:08AM 19 AMY WALSH ON BEHALF OF MR. BALWANI.

10:08AM 20 I'M JOINED BY JEFF COOPERSMITH, STEPHEN CAZARES, AND

10:08AM 21 MR. BALWANI IS IN THE COURTROOM.

10:08AM 22 I'M JOINED BY OTHER COLLEAGUES FROM ORRICK TODAY.

10:08AM 23 THE COURT: THANK YOU. GOOD MORNING.

10:08AM 24 THIS IS A DATE AND TIME SET FOR HEARING ON CERTAIN

10:08AM 25 MOTIONS.

10:08AM 1 I DO HAVE A PRELIMINARY QUESTION TO ASK COUNSEL, HOWEVER.

10:08AM 2 EXCUSE ME.

10:08AM 3 I'VE REVIEWED THE PLEADINGS IN THIS MATTER, INCLUDING

10:08AM 4 PLEADINGS THAT WERE SEALED, SOME OTHER DOCUMENTS.

10:08AM 5 MY QUESTION FOR YOU BEFORE WE BEGIN IN EARNEST DISCUSSING

10:08AM 6 THE ISSUES TODAY, I'M CURIOUS WHETHER OR NOT OUR DISCUSSION IS

10:08AM 7 NECESSARILY GOING TO INCLUDE DISCUSSION OF OTHER MATTERS THAT

10:08AM 8 ARE EITHER SEALED THEMSELVES OR IN REGARDS TO OTHER

10:08AM 9 INVESTIGATIONS THAT MIGHT BE OTHERWISE INAPPROPRIATE FOR THE

10:09AM 10 PUBLIC DISCLOSURE AT THIS TIME BECAUSE IT COVERS POTENTIALLY

10:09AM 11 GRAND JURY MATTERS, AND AS WE ALL KNOW, MATTERS BEFORE THE

10:09AM 12 GRAND JURY ARE PRIVATE AND PRIVILEGED?

10:09AM 13 MR. LEACH.

10:09AM 14 MR. LEACH: YOUR HONOR, I HAD THE SAME THOUGHTS IN

10:09AM 15 ADVANCE. I WAS PREPARED TODAY TO DO THE BEST I CAN WITH MY

10:09AM 16 COMMENTS TO NOT TALK ABOUT THE DETAILS OF SEALED PROCEEDINGS,

10:09AM 17 BUT AS THE COURT KNOWS, WE SUBMITTED OUR OPPOSITION ENTIRELY

10:09AM 18 UNDER SEAL BECAUSE IT DOES DISCUSS OTHER FILINGS THAT ARE UNDER

10:09AM 19 SEAL AND MATTERS THAT THE GOVERNMENT DOESN'T ORDINARILY TALK

10:09AM 20 ABOUT IN THE COURSE OF AN INVESTIGATION.

10:09AM 21 SO I DEFER TO THE COURT. WHATEVER THE COURT THINKS IS

10:09AM 22 APPROPRIATE. I CAN KEEP MY COMMENTS AS HIGH LEVEL AS POSSIBLE

10:09AM 23 TO AVOID UNNECESSARILY GETTING INTO SOME OF THE DETAILS THAT

10:09AM 24 MIGHT ANIMATE THOSE CONCERNS.

10:10AM 25 SO I DEFER TO THE COURT ON WHAT IT THINKS WE SHOULD DO.

10:10AM 1 THE COURT: MS. WALSH, DO YOU WANT TO BE HEARD ON

10:10AM 2 THIS?

10:10AM 3 MS. WALSH: YES, YOUR HONOR.

10:10AM 4 WE ALSO DEFER TO THE COURT ON THIS ISSUE.

10:10AM 5 THE COURT SHOULD KNOW THAT DURING THE COURSE OF ARGUMENT I

10:10AM 6 WILL BE TALKING ABOUT EMAILS THAT WERE SENT ABOUT THE

10:10AM 7 INVESTIGATION. I'LL LIKELY BE QUOTING FROM A TRANSCRIPT THAT

10:10AM 8 WAS SEALED. SO IF THAT INFORMS THE COURT'S DECISION MAKING, I

10:10AM 9 JUST WANT TO LET THE COURT KNOW.

10:10AM 10 THE COURT: ALL RIGHT. WELL, THANK YOU.

10:10AM 11 AND I LOOK AT THIS, THE ISSUES THAT ARE CONCERNED HERE,

10:10AM 12 THEY DO SEEM TO OVERLAP AND INTERTWINING INTIMATELY WITH OTHER

10:10AM 13 PROCEEDINGS THAT ARE SECRET.

10:10AM 14 FOR EXAMPLE, WE ALL KNOW GRAND JURY PROCEEDINGS ARE

10:10AM 15 SECRET, AND I WANT TO HEAR FROM YOU ABOUT THESE MATTERS.

10:10AM 16 OF COURSE, NOT EVERYTHING IN THESE PLEADINGS COVERED IS

10:11AM 17 SECRET AND PRIVILEGED.

10:11AM 18 THE COURT IS OF THE MIND THAT FOR ME TO RECEIVE YOUR

10:11AM 19 ARGUMENTS AS FULSOME AS YOU WANT ME TO HEAR THEM, IT IS GOING

10:11AM 20 TO REQUIRE, I BELIEVE -- I AM GOING TO ASK QUESTIONS THAT MIGHT

10:11AM 21 FOCUS ON SOME OF THESE OTHER PROCEEDINGS THAT ARE INAPPROPRIATE

10:11AM 22 FOR A PUBLIC SETTING.

10:11AM 23 I DO THINK THAT IT WOULD BE INCONVENIENT, IT WOULD

10:11AM 24 INTERRUPT THE PROCESS FOR ME TO CLOSE THE COURTROOM EVERY TIME

10:11AM 25 I ASK A QUESTION AND THEN REOPEN IT AGAIN.

10:11AM 1 I DO WANT TO PROVIDE ACCESS, OF COURSE, TO THE PUBLIC FOR
10:11AM 2 THESE PROCEEDINGS AS BEST WE CAN.

10:11AM 3 THERE IS SOME TENSION BETWEEN PROTECTING THOSE MATTERS
10:11AM 4 THAT ARE SECRET BY LAW AND ALLOWING ACCESS TO THE PUBLIC, WHICH
10:11AM 5 THEY HAVE A RIGHT TO HAVE.

10:11AM 6 LET ME ASK YOU TO DO THIS, IF IT'S POSSIBLE FOR YOU AND IF
10:11AM 7 YOU WISH, TO GIVE JUST A BRIEF SUMMARY, A NONPRIVILEGE,
10:12AM 8 NONSECRET I'LL CALL IT, IF YOU CAN TOUCH ON TOPICS THAT ARE NOT
10:12AM 9 OTHERWISE INAPPROPRIATE FOR PUBLIC CONSUMPTION.

10:12AM 10 AND I ASK YOU TO DO THIS TO INFORM ME, BUT ALSO TO MAKE A,
10:12AM 11 AS BEST YOU CAN, A RECORD FOR ANY MEMBERS OF THE PUBLIC WHO ARE
10:12AM 12 HERE AS TO WHAT YOU THINK WE SHOULD TALK ABOUT IN A
10:12AM 13 NONPRIVILEGE MANNER.

10:12AM 14 AND I'LL THEN -- MY INTENT IS TO THEN SEAL THE COURTROOM.

10:12AM 15 MR. LEACH, DO YOU AGREE WITH THAT?

10:12AM 16 MR. LEACH: YES, YOUR HONOR.

10:12AM 17 THE COURT: CAN YOU DO THAT DO YOU THINK?

10:12AM 18 MR. LEACH: I THINK THAT'S FAIR, AND I UNDERSTAND
10:12AM 19 THE COURT'S RULING.

10:12AM 20 THE DISCUSSION WOULD INCLUDE MATTERS --

10:12AM 21 THE COURT: I'M SORRY. LET ME JUST ASK MS. WALSH,
10:12AM 22 IS THAT ALL RIGHT WITH YOU, MS. WALSH?

10:12AM 23 MS. WALSH: I THINK SO, YOUR HONOR.

10:12AM 24 IT MAY BE HARD TO STOP FROM THE HIGH LEVEL, NONSECRET
10:12AM 25 MATERIAL TO DELVING INTO THE DETAILS, BUT I WILL TRY MY BEST TO

10:12AM 1 DO THAT.

10:12AM 2 THE COURT: WELL, I'M NOT ASKING FOR YOUR ARGUMENTS

10:13AM 3 NOW.

10:13AM 4 MS. WALSH: OH, I SEE.

10:13AM 5 THE COURT: BUT WHAT I WOULD LIKE TO HAVE YOU DO IS

10:13AM 6 BASICALLY GIVE A -- LET ME CALL IT THIS, AND I MEAN NO

10:13AM 7 DISRESPECT, A PUBLIC PREAMBLE, A PUBLIC DISCUSSION OF WHAT YOU

10:13AM 8 THINK OUR HEARING WILL BE ABOUT TODAY, WITHOUT GOING INTO

10:13AM 9 DETAILS, TO THE EXTENT THAT YOU CAN.

10:13AM 10 IF YOU CAN'T, YOU JUST TELL ME YOU CAN'T, AND THAT'S FINE.

10:13AM 11 BUT I JUST WANT TO GIVE YOU AN OPPORTUNITY TO DO THAT.

10:13AM 12 MR. LEACH.

10:13AM 13 MR. LEACH: THE DISCUSSION FROM THE GOVERNMENT'S

10:13AM 14 PERSPECTIVE, YOUR HONOR, WOULD INVOLVE SPECIFIC INVESTIGATORY

10:13AM 15 STEPS IN AN ONGOING GOVERNMENT INVESTIGATION; IT WOULD INCLUDE

10:13AM 16 A DISCUSSION OF A NUMBER OF SEALED FILINGS RELATING TO THOSE

10:13AM 17 INVESTIGATIVE STEPS; IT WOULD INVOLVE DISCUSSION OF POTENTIALLY

10:13AM 18 PRIVILEGE MATERIAL WHERE THERE'S AN ONGOING DISPUTE ABOUT THE

10:13AM 19 EXTENT OF THE PRIVILEGE AND THE ONGOING GOVERNMENT'S REVIEW,

10:13AM 20 ALL OF WHICH ARE APPROPRIATELY SEALED IN CERTAIN CIRCUMSTANCES,

10:14AM 21 AND IT'S VERY DIFFICULT TO DISENTANGLE THAT FROM SOME OF THE

10:14AM 22 SUBSTANTIVE RELIEF THAT THE DEFENDANT IS SEEKING HERE.

10:14AM 23 THE COURT: OKAY. THANK YOU.

10:14AM 24 MS. WALSH.

10:14AM 25 MS. WALSH: SAME FROM THE DEFENSE, YOUR HONOR. WE

10:14AM 1 WOULD GO INTO THE SAME TYPES OF MATERIALS, AND IT WOULD BE
10:14AM 2 DIFFICULT TO DISENTANGLE.

10:14AM 3 THE COURT: OKAY. AND THAT WOULD BE WHAT THIS
10:14AM 4 COURSE OF OUR DECISION WOULD BE REGARDING YOUR MOTIONS TODAY OR
10:14AM 5 YOUR MOTION, MS. WALSH?

10:14AM 6 MS. WALSH: CORRECT. YES, YOUR HONOR.

10:14AM 7 THE COURT: ALL RIGHT. THANK YOU.

10:14AM 8 I APPRECIATE YOU AUGMENTING THE RECORD FOR THE BENEFIT OF
10:14AM 9 THE RECORD AND ANY PUBLIC MEMBERS THAT ARE PRESENT.

10:14AM 10 I DO, AFTER LOOKING AT THE PLEADINGS HERE, AFTER HEARING
10:14AM 11 FROM YOU THIS MORNING, IT -- THE COURT FINDS THAT AT THIS TIME
10:14AM 12 IT'S APPROPRIATE FOR THE COURT AND REQUIRED OF THE COURT TO
10:14AM 13 SEAL THESE PROCEEDINGS AND THE TRANSCRIPT NECESSARILY BECAUSE
10:14AM 14 OUR CONVERSATIONS ARE GOING TO COVER PRIVILEGE MATERIALS,
10:14AM 15 MATTERS ABOUT POTENTIAL OTHER INVESTIGATIONS THAT MIGHT HAVE --
10:15AM 16 MIGHT BE UNDER SECRECY, GRAND JURY MATTERS AND THOSE TYPES OF
10:15AM 17 THINGS, AND THOSE ARE INAPPROPRIATE FOR PUBLIC CONSUMPTION. AS
10:15AM 18 WE KNOW, THERE'S PROTECTED, PROTECTED MATTERS THERE.

10:15AM 19 SO I AM AT THIS TIME GOING TO FIND THAT IT IS APPROPRIATE
10:15AM 20 TO SEAL THE COURTROOM AND SEAL THE TRANSCRIPT FROM HERE ON.

10:15AM 21 THE TRANSCRIPT IS SEALED.

10:15AM 22 I'LL ASK ANY MEMBERS OF THE PUBLIC WHO ARE PRESENT TO
10:15AM 23 LEAVE THE COURTROOM. MY COURTROOM DEPUTY WILL ASSIST YOU IN
10:15AM 24 THAT REGARD, AND I APPRECIATE YOUR COOPERATION AND RECOGNITION
10:15AM 25 OF THE COURT'S ORDER AND THE BASIS FOR IT.

10:15AM 1 LET ME SAY I DON'T KNOW HOW LONG THIS HEARING WILL LAST.

10:15AM 2 AT SOME POINT IN TIME THE COURT MAY UNSEAL THE PROCEEDINGS AND

10:16AM 3 OPEN THEM TO THE PUBLIC. I JUST DON'T KNOW HOW LONG THAT WILL

10:16AM 4 BE AND HOW LONG THIS CONVERSATION WILL TAKE PLACE, BUT WHEN

10:16AM 5 APPROPRIATE, THE COURT WILL TAKE APPROPRIATE ACTION.

10:15AM 6 **(SEALED PROCEEDINGS PAGES 1391 - 1441.)**

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10:15AM 1 ///

11:32AM 2 (OPEN COURT PROCEEDINGS.)

11:33AM 3 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

11:33AM 4 THE COURT HAS OPENED THE COURTROOM AND UNSEALED THE

11:33AM 5 PROCEEDINGS.

11:33AM 6 I WANT TO THANK ANY MEMBER OF THE PUBLIC WHO HAS ENTERED.

11:33AM 7 THANK YOU FOR THEIR PATIENCE AND HOPEFULLY THEIR RECOGNITION

11:33AM 8 THAT THERE ARE MATTERS THAT THE COURT MUST TAKE OUTSIDE OF THE

11:33AM 9 PRESENCE OF THE PUBLIC IF THEY TOUCH ON OTHER CONFIDENTIAL

11:33AM 10 MATTERS, INCLUDING OTHER INVESTIGATIONS, OTHER TESTIMONY, OTHER

11:33AM 11 SEALED DOCUMENTS, AND THAT'S WHAT THE COURT DID HERE.

11:33AM 12 THE COURT HAS NOW OPENED THE PROCEEDINGS.

11:33AM 13 LET ME ASK, MR. LEACH, ANYTHING FURTHER, SIR, IN REGARDS

11:33AM 14 TO YOUR POSITION ON THE MOTION?

11:33AM 15 MR. LEACH: NO, YOUR HONOR.

11:33AM 16 THE COURT: MS. WALSH?

11:33AM 17 MS. WALSH: NO, YOUR HONOR.

11:33AM 18 THE COURT: ALL RIGHT. THANK YOU.

11:33AM 19 LET ME INDICATE THE COURT IS GOING TO, WITH COUNSEL'S

11:34AM 20 ASSISTANCE, REVIEW THE TRANSCRIPT OF THE HEARING HERE, AND THE

11:34AM 21 COURT ANTICIPATES THAT IT WILL, AFTER REVIEWING THE TRANSCRIPT

11:34AM 22 AND MAKING ANY NECESSARY REDACTIONS TO PRESERVE THE

11:34AM 23 CONFIDENTIALITY THAT I SPOKE OF EARLIER, THE COURT INTENDS TO

11:34AM 24 MAKE THE TRANSCRIPT WITH THOSE REDACTIONS PUBLIC AND AVAILABLE

11:34AM 25 FOR PUBLIC ACCESS.

11:34AM 1 ANY OBJECTION TO THAT, MR. LEACH?

11:34AM 2 MR. LEACH: NO, YOUR HONOR.

11:34AM 3 THE COURT: MS. WALSH?

11:34AM 4 MS. WALSH: NO, YOUR HONOR.

11:34AM 5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. THANK

11:34AM 6 YOU FOR YOUR TIME THIS MORNING.

11:34AM 7 MS. WALSH: THANK YOU.

11:34AM 8 THE COURT: MOTION IS UNDER SUBMISSION. THANK YOU.

11:34AM 9 MR. LEACH: THANK YOU.

11:34AM 10 THE COURT: AND WE'RE BACK TOMORROW AT 9:00 I

11:34AM 11 BELIEVE.

11:34AM 12 MR. LEACH: YES, YOUR HONOR.

11:34AM 13 THE CLERK: COURT IS ADJOURNED.

11:34AM 14 (COURT ADJOURNED AT 11:34 A.M.)

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3 CERTIFICATE OF REPORTER
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7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

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IRENE RODRIGUEZ, CSR, RMR, CRR
17 CERTIFICATE NUMBER 8074
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19 DATED: MARCH 29, 2022
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